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EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

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DELIVERY MODE

04/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of Disposition of Claims: Claims pending in the application are 1-5,7,11,15-17,19,21,25,27,29,30,32-36,38,41,42,44-50,52,53,56-61 and 63-66.

DETAILED ACTION

Election/Restrictions

Although claims 53 and 57 were not elected by Applicant, since the previous Examiner already examined them, and in accordance with Applicant's reliance thereon, they will be considered to fall within the elected species. Applicant canceled claims 6, 8-10, 12-14, 18, 20, 22-24, 26, 28, 31, 37, 39, 40, 43, 51, 54, 55 and 62. Accordingly, claims 1-5, 7, 11, 15-17, 19, 21, 25, 27, 29, 30, 32-36, 38, 41, 42, 44-50, 52, 53, 56-61 and 63-66 are currently pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 11, 15, 16, 21, 25, 27, 29, 30, 32, 33, 38, 41, 42, 44-47, 52, 56, 58, 59 and 63-66 are rejected under 35 U.S.C. 102(a) as being anticipated by Kramer (WO 2004/021901).

Kramer teaches a screw and rod fixation assembly for fixing a screw and a rod comprising: a screw 3 including a screw head; a body portion 5 including a screw head receiving means 4 for receiving said screw head and rod receiving means 10/11 for

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receiving a rod 12 therein, said rod receiving means 10/11 being offset from said screw head receiving means 4; and a cam lock 16 for locking the rod 12 within said rod receiving means 10/11; said cam lock 16 having an engaged condition for engaging and maintaining the rod in position in said rod receiving means 10/11 and an unengaged condition for enabling the rod to freely enter said rod receiving means 10/11; said cam lock further including gripping means 17 on an exterior surface capable of maintaining said cam lock in said body portion upon engagement with a rotary tool. Concerning claim 41, it is noted that the Examiner has interpreted elements 17 of Kramer as the gripping means of claim 42. However, these elements could alternatively be considered extraction means since extraction means and gripping means are not *both* required by the present invention. Concerning claims 44, 45, 58 and 59, Kramer discloses a spherical screw head seat in Fig. 13. A tip or end portion of the rod seating means is smaller in width than a diameter of a rod being placed therein. Kramer shows an open passage between the rod seat and screw receiving means.

Claims 1, 2, 4, 5, 15-17, 19, 29, 30, 32, 33, 35, 36, 46, 47, 49 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashman (US 6,183,473).

Ashman teaches a screw and rod fixation assembly for fixing a screw and a rod comprising: a screw 40 including a screw head 42; a body portion 5 including a screw head receiving means 35 for receiving said screw head 42 and rod receiving means 31 for receiving a rod R therein, said rod receiving means 31 being offset from said screw head receiving means 35; and locking means 60 for locking the rod R within said rod receiving means 35; said locking means 60 having an engaged condition for engaging

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and maintaining the rod R in position in said rod receiving means 35 and an unengaged condition for enabling the rod R to freely enter said rod receiving means 35; said locking means also including a grooved wall 63 for positioning said locking means in said engaged condition. Concerning claims 5, 19, 36 and 50, it is the Examiner's position that the grooves of the grooved wall 63 of the locking means 60 are capable of engaging a rod inserted into rod receiving means 31 and could therefore be considered "rod engaging means." Ashman teaches that the device may comprise an interior portion defining an open passage between a rod seat and a screw receiving means (see, e.g., Fig. 19).

Claims 1-3, 32-34 and 46-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor (US 6,685,705).

Taylor teaches a screw and rod fixation assembly for fixing a screw and a rod comprising: a screw B including a screw head; a body portion including a screw head receiving means 4 for receiving said screw head and rod receiving means 2 for receiving a rod A therein, said rod receiving means 2 being offset from said screw head receiving means 4; and locking means 3 for locking a rod A within said rod receiving means 2; wherein said locking means 3 has an engaged condition for engaging and maintaining the rod A in position in said rod receiving means 2 and an unengaged condition for enabling the rod A to freely enter said rod receiving means 2; wherein said locking means 3 includes a relieved wall (top surface of set screw head is recessed for engagement with a rotary tool) allowing positioning of said locking means 3 in said unengaged condition.

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Claims 60 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Simonson (US 5,643,263).

Simonson teaches a locking mechanism for locking a rod within an assembly, said locking mechanism comprising: a lock body 60 including a relieved portion 66 for allowing entry of a rod into an assembly and a grooved portion 62 for engaging and maintaining the rod within the assembly; wherein the grooved portion includes rod engaging means 64.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer as applied to claim 52 above and further in view of the following. Kramer discloses the claimed invention except for the cam lock including a wedge shaped outer surface. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the cam lock of Kramer with wedge shaped outer surface, since Applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966).

Allowable Subject Matter

Claim 57 is allowed.

Response to Arguments

Applicant's arguments filed 06 September 2007 have been fully considered but they are not persuasive.

Regarding the Kramer reference, the cam lock comprises a substantially cylindrical body, an end surface, and a side surface that is capable of being positioned rotatably. The intended use "for bearing against the screw head" and "for directly engaging the rod" do not distinguish claims directed to structure (as opposed to a method of using the structure), since the art is capable of performing the stated function. For example, when the device is disassembled the noted portions are capable of bearing against each other or directly contacting each other. Likewise, the locking means of Ashman and Taylor comprise a substantially cylindrical body, an end surface and a side surface that is capable of being positioned rotatably. Similarly, the locking body of Simonson is substantially cylindrical and has a circumferentially extending extension along a side thereof. The locking means is rotatable. A relieved portion or a grooved portion of the circumferential extension can be positioned adjacent the rod (e.g. when disassembled or depending on how the device is assembled).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733